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Hellwig*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

**ROBERT MITCHELL,**

Plaintiff,

**v.**

**T. FELKER, et al.,**

Defendants.

Case No. 2:08-CV-01196 JAM EFB

**DEFENDANTS' ANSWER TO  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT**

Magistrate Judge: Hon. Edmund F. Brennan

Action Filed: May 30, 2008

Answering Plaintiffs' Second Amended Complaint, Defendants M. Cate, S. Kernan, T. McDonald, G. Giurbino, J. Tilton, T. Felker, M. Wright, F. Foulk, D. Vanderville, J. Owen, and D. Hellwig (Defendants) deny, admit, and allege as follows:

**NATURE OF THE ACTION**

1. Answering paragraph one of Plaintiffs' Second Amended Complaint, Defendants admit that Plaintiffs bring an action challenging the constitutionality of the California Department of Corrections and Rehabilitation's (CDCR) lockdown and modified program policies and

1 procedures. This paragraph contains allegations that assume disputed facts and, therefore,  
2 Defendants deny each and every remaining allegation.

3 2. Answering paragraph two of Plaintiffs' Second Amended Complaint, Defendants  
4 admit that during a lockdown, a portion of the facility is affected by suspension of required  
5 programs or services, and inmates are not released except as determined by the facility  
6 administration on an individual, case-by-case basis. Except as otherwise admitted, Defendants  
7 deny each and every remaining allegation.

8 3. Answering paragraph three of Plaintiffs' Second Amended Complaint, Defendants  
9 admit that inmates often disturb the safety and security of CDCR's institutions with threats and  
10 acts of violence. As a result, the prison may be placed on a state of an emergency, lockdown, or  
11 modified program. Defendants further admit that lockdowns and modified programs are designed  
12 to maintain institutional safety and security by preventing inmates and groups of inmates from  
13 engaging in further acts of violence. The remainder of paragraph three contains the Named  
14 Plaintiffs' factual characterizations and legal conclusions, to which no response is required. To  
15 the extent that the remaining allegations in paragraph three require a response, Defendants deny  
16 these allegations.

17 4. Answering paragraph four of Plaintiffs' Second Amended Complaint, Defendants  
18 admit that Plaintiffs allege violations of their Eighth Amendment right to outdoor exercise.  
19 Except as otherwise admitted, Defendants deny each and every remaining allegation.

20 5. Answering paragraph five of Plaintiffs' Second Amended Complaint, Defendants  
21 deny that CDCR is "vastly out of step with other State prison systems." Defendants lack  
22 knowledge or information sufficient to form a belief as to the truth of the remaining allegations  
23 set forth in paragraph five and, on that basis, deny them.

24 6. Answering paragraph six of Plaintiffs' Second Amended Complaint, Defendants  
25 admit that the Named Plaintiffs are California inmates and may, at times, be subject to lockdowns  
26 and modified programs. Defendants further admit that the Named Plaintiffs' action purports to  
27 bring claims under the Eighth and Fourteenth Amendments to the United States Constitution.  
28 Defendants deny that CDCR has a policy and practice of implementing lockdowns based on race

1 or that CDCR maintains lockdowns for excessive periods of time. Defendants admit that the  
2 Named Plaintiffs seek injunctive and declaratory relief. Defendants deny that the Named  
3 Plaintiffs or the alleged class is entitled to such relief. Except as otherwise admitted, Defendants  
4 deny each and every remaining allegation.

5 7. Answering paragraph seven of Plaintiffs' Second Amended Complaint, Defendants  
6 admit that Plaintiff Robert Mitchell seeks damages. Defendants deny that Plaintiff Robert  
7 Mitchell is entitled to such relief. Except as otherwise admitted, Defendants deny each and every  
8 remaining allegation.

### 9 JURISDICTION

10 8. Answering paragraph eight of Plaintiffs' Second Amended Complaint, Defendants  
11 admit that this Court has jurisdiction over this action. Defendants further admit that the Named  
12 Plaintiffs seek declaratory and injunctive relief. Defendants deny that the Named Plaintiffs or the  
13 alleged class is entitled to such relief.

### 14 VENUE

15 9. Answering paragraph nine of Plaintiffs' Second Amended Complaint, Defendants  
16 admit that venue is proper in this district.

### 17 PARTIES

18 10. Answering paragraph ten of Plaintiffs' Second Amended Complaint, Defendants  
19 admit that Plaintiff Robert Mitchell is an inmate at Folsom State Prison in Folsom, California.  
20 Defendants further admit that Mr. Mitchell has brought claims alleging Eighth and Fourteenth  
21 Amendment violations. Except as otherwise admitted, Defendants deny each and every  
22 remaining allegation.

23 11. Answering paragraph eleven of Plaintiffs' Second Amended Complaint, Defendants  
24 admit that Plaintiff Alvaro Quesada is a prisoner at California State Prison, Corcoran, in  
25 Corcoran, California. Defendants further admit that Mr. Quesada has brought claims alleging  
26 Eighth and Fourteenth Amendment violations. Except as otherwise admitted, Defendants deny  
27 each and every remaining allegation.

1           12. Answering paragraph twelve of Plaintiffs' Second Amended Complaint, Defendants  
2 admit that Plaintiff Tony Trujillo is a prisoner at Ironwood State Prison in Blythe, California.  
3 Defendants further admit that Mr. Trujillo has brought claims alleging Eighth and Fourteenth  
4 Amendment violations. Except as otherwise admitted, Defendants deny each and every  
5 remaining allegation.

6           13. Answering paragraph thirteen of Plaintiffs' Second Amended Complaint, Defendants  
7 admit that Plaintiff Hanif Abdullah is a prisoner at California State Prison, Solano in Vacaville,  
8 California. Defendants further admit that Mr. Abdullah has brought claims alleging Eighth and  
9 Fourteenth Amendment violations. Except as otherwise admitted, Defendants deny each and  
10 every remaining allegation.

11           14. Answering paragraph fourteen of Plaintiffs' Second Amended Complaint, Defendants  
12 admit that Defendant Matthew Cate is the Secretary of CDCR. Defendants further admit that  
13 Defendant Cate is sued in his official capacity and is a served and represented Defendant in this  
14 action. Defendants further admit that CDCR is responsible for overseeing the management and  
15 operation of CDCR's prison facilities. Defendants further admit that as the Secretary of CDCR,  
16 Defendant Matthew Cate is generally responsible for the operation of the California state prison  
17 system. Except as otherwise admitted, Defendants lack information or belief sufficient to answer  
18 the remaining allegations set forth in paragraph fourteen of Plaintiffs' Second Amended  
19 Complaint and on that basis deny them.

20           15. Answering paragraph fifteen of Plaintiffs' Second Amended Complaint, Defendants  
21 deny that Defendant Scott Kernan is the Undersecretary of CDCR for Operations. Defendant  
22 Kernan retired from CDCR in 2011. Therefore, Defendants deny that Defendant Kernan is  
23 "responsible for the operation of all the prison facilities, including prison lockdown policies and  
24 practices, and he reviews and approves decisions by individual prisons to impose and maintain  
25 lockdowns." Defendants admit that Defendant Kernan is sued in his official capacity and is a  
26 served and represented Defendant in this action. Except as otherwise admitted, Defendants deny  
27 each and every remaining allegation.  
28

1           16. Answering paragraph sixteen of Plaintiffs' Second Amended Complaint, Defendants  
2 deny that Defendant Terri McDonald is the Chief Deputy Secretary of CDCR for Adult  
3 Operations. Defendant McDonald is the Undersecretary of CDCR Operations. As Defendant  
4 McDonald retains authority over CDCR's Division of Adult Institutions, Defendants admit that  
5 Defendant McDonald is generally "responsible for the operation of all the prison facilities,  
6 including prison lockdown policies and practices." However, Defendants deny that Defendant  
7 McDonald "reviews and approves decisions by individual prisons to impose and maintain  
8 lockdowns." Defendants admit that Defendant McDonald is sued in her official capacity and is a  
9 served and represented Defendant in this action. Except as otherwise admitted, Defendants deny  
10 each and every remaining allegation.

11           17. Answering paragraph seventeen of Plaintiffs' Second Amended Complaint,  
12 Defendants deny that Defendant George Giurbino is the Director of the CDCR Division of Adult  
13 Institutions. Defendant Giurbino is a retired annuitant with CDCR. Therefore, Defendants deny  
14 that Defendant Giurbino is "responsible for the operation of all adult prison facilities, including  
15 prison lockdown policies and practices, and he reviews and approves decisions by individual  
16 prisons to impose and maintain lockdowns." Defendants admit that Defendant Giurbino is sued  
17 in his official capacity and is a served and represented Defendant in this action. Except as  
18 otherwise admitted, Defendants deny each and every remaining allegation.

19           18. Answering paragraph eighteen of Plaintiffs' Second Amended Complaint, Defendants  
20 admit that Defendant James Tilton was the Secretary of CDCR in 2006 and 2007. Defendants  
21 further admit that Defendant Tilton is sued in his individual capacity and is a served and  
22 represented Defendant in this action. Defendants further admit that as the Secretary of CDCR,  
23 Defendant James Tilton was generally responsible for overseeing the management and operation  
24 of CDCR's prison facilities. Except as otherwise admitted, Defendants deny each and every  
25 remaining allegation.

26           19. Answering paragraph nineteen of Plaintiffs' Second Amended Complaint, Defendants  
27 admit that Defendant Tom Felker was the Warden of High Desert State Prison from April 23,  
28 2007 to October 26, 2008. Defendants further admit that section 3380(a) of Title 15 of the

1 California Code of Regulations states that a CDCR warden or superintendent is “the chief  
2 executive officer of that institution, and is responsible for the custody, treatment, training and  
3 discipline of all inmates under his or her charge.” Defendants further admit that Defendant Felker  
4 is sued in his individual capacity and is a served and represented Defendant in this action.  
5 Defendants deny that Defendant Felker was responsible for implementing “lengthy race-based  
6 lockdowns at High Desert State Prison.” Except as otherwise admitted, Defendants deny each  
7 and every remaining allegation.

8 20. Answering paragraph twenty of Plaintiffs’ Second Amended Complaint, Defendants  
9 admit that Defendant M. Wright was an Associate Warden at High Desert State Prison from  
10 January 14, 2008 to December 21, 2009. Defendants further admit that Defendant Wright is sued  
11 in his individual capacity and is a served and represented Defendant in this action. Defendants  
12 deny that Defendant Wright was responsible for implementing “lengthy race-based lockdowns at  
13 High Desert State Prison.” Except as otherwise admitted, Defendants deny each and every  
14 remaining allegation.

15 21. Answering paragraph twenty-one of Plaintiffs’ Second Amended Complaint,  
16 Defendants admit that Defendant F. Foulk was a Facility Captain at High Desert State Prison  
17 from July 1, 2006 to February 24, 2008. Defendants further admit that Defendant Foulk is sued  
18 in his individual capacity and is a served and represented Defendant in this action. Defendants  
19 deny that Defendant Foulk was responsible for implementing “lengthy race-based lockdowns at  
20 High Desert State Prison.” Except as otherwise admitted, Defendants deny each and every  
21 remaining allegation.

22 22. Answering paragraph twenty-two of Plaintiffs’ Second Amended Complaint,  
23 Defendants deny that Defendant D. Vanderville was a Facility Captain at High Desert State  
24 Prison “at all relevant times.” Defendants admit that Defendant Vanderville may have worked as  
25 an acting Facility Captain at High Desert State Prison. Defendants further admit that Defendant  
26 Vanderville is sued in his individual capacity and is a served and represented Defendant in this  
27 action. Defendants deny that Defendant Vanderville was responsible for implementing “lengthy  
28

1 race-based lockdowns at High Desert State Prison.” Except as otherwise admitted, Defendants  
2 deny each and every remaining allegation.

3 23. Answering paragraph twenty-three of Plaintiffs’ Second Amended Complaint,  
4 Defendants admit that Defendant J. Owen was a correctional counselor at High Desert State  
5 Prison from April 12, 2004 to September 10, 2011. Defendants further admit that Defendant  
6 Owen is sued in his individual capacity and is a served and represented Defendant in this action.  
7 Except as otherwise admitted, Defendants deny each and every remaining allegation.

8 24. Answering paragraph twenty-four of Plaintiffs’ Second Amended Complaint,  
9 Defendants admit that Defendant D. Hellwig was a correctional counselor at High Desert State  
10 Prison from April 8, 2002 to present. Defendants further admit that Defendant Hellwig is sued in  
11 his individual capacity and is a served and represented Defendant in this action. Except as  
12 otherwise admitted, Defendants deny each and every remaining allegation

13 **CLASS ACTION ALLEGATIONS**

14 25. Answering paragraph twenty-five of Plaintiffs’ Second Amended Complaint,  
15 Defendants admit that the Named Plaintiffs purport to bring a class action under Rule 23(b)(2) of  
16 the Federal Rules of Civil Procedure on behalf of themselves and other male inmates who are  
17 currently, or will in the future be, under the jurisdiction of CDCR. Except as otherwise admitted,  
18 Defendants deny each and every remaining allegation.

19 26. Defendants deny each and every allegation contained in paragraph twenty-six of  
20 Plaintiffs’ Second Amended Complaint.

21 27. Paragraph twenty-seven of Plaintiffs’ Second Amended Complaint contains the  
22 Named Plaintiffs’ factual characterizations and legal conclusions, to which no response is  
23 required. To the extent that the allegations in paragraph twenty-seven require a response,  
24 Defendants deny these allegations.

25 28. Answering paragraph twenty-eight of Plaintiffs’ Second Amended Complaint,  
26 Defendants deny that the Named Plaintiffs or the alleged class are entitled to injunctive or  
27 declaratory relief. The remainder of paragraph twenty-eight contains the Named Plaintiffs’  
28 factual characterizations and legal conclusions, to which no response is required. To the extent

1 that the remaining allegations in paragraph twenty-eight require a response, Defendants deny  
2 these allegations.

3 29. Answering paragraph twenty-nine of Plaintiffs' Second Amended Complaint,  
4 Defendants deny that the Named Plaintiffs' claims are typical of the claims of the alleged classes.  
5 Defendants lack knowledge or information sufficient to form a belief as to the truth of the  
6 remaining allegations set forth in paragraph twenty-nine and, on that basis, deny them.

### 7 **FACTUAL ALLEGATIONS**

8 30. Answering paragraph thirty of Plaintiffs' Second Amended Complaint, Defendants  
9 deny that California prisons have an express policy and practice of implementing lockdowns in a  
10 racially discriminatory manner. Defendants admit that Appendices A through D attached to  
11 Plaintiffs' Second Amended Complaint are decisions by CDCR's Inmate Appeals Branch relating  
12 to four separate lockdowns or modified programs. Defendants refer the Court to these appendices  
13 for their true and correct contents. Except as otherwise admitted, Defendants deny each and  
14 every remaining allegation.

15 31. Answering paragraph thirty-one of Plaintiffs' Second Amended Complaint,  
16 Defendants admit that CDCR sometimes classifies inmates as "Black," "White," "Hispanic," and  
17 "Other." Defendants further admit that upon arrival at an institution reception center or a  
18 program institution, inmates are screened for an appropriate housing assignment and an "Initial  
19 Housing Review" form is completed. Defendants deny that they implement "racially  
20 discriminatory policies" or that they "label each prisoner by race from the moment they step foot  
21 in prison." Defendants lack knowledge or information sufficient to form a belief as to the truth of  
22 the remaining allegations set forth in paragraph thirty-one and, on that basis, deny them.

23 32. Answering paragraph thirty-two of Plaintiffs' Second Amended Complaint,  
24 Defendants admit that High Desert State Prison, CSP-Solano, Ironwood State Prison, CSP-  
25 Corcoran, and Kern Valley State Prison have color-coded cards used to identify the ethnicity and  
26 group affiliation of inmates in particular cells. Among other things, these cards provide visual  
27 cues that allow prison officials to prevent race-based victimization, reduce race-based violence,  
28 and prevent thefts and assaults. Defendants deny that these prisons have an "official policy" of



1 posting these signs. Defendants lack knowledge or information sufficient to form a belief as to  
2 the truth of the remaining allegations set forth in paragraph thirty-two and, on that basis, deny  
3 them.

4 33. Answering paragraph thirty-three of Plaintiffs' Second Amended Complaint,  
5 Defendants admit that prisons provide Program Status Reports to CDCR headquarters describing  
6 each lockdown. Defendants refer the Court to Section 3000 of the California Code of  
7 Regulations, Title 15 (Jan. 1, 2011) for the true and correct definitions of the terms "lockdown"  
8 and "modified program." Defendants lack knowledge or information sufficient to form a belief as  
9 to the truth of the remaining allegations set forth in paragraph thirty-three and, on that basis, deny  
10 them.

11 34. Answering paragraph thirty-four of Plaintiffs' Second Amended Complaint,  
12 Defendants deny that Program Status Reports promote racial discrimination. Defendants admit  
13 that Parts A and B of each Program Status Report include an "inmates affected" field.  
14 Defendants further admit that there are five pre-printed categories from which to choose in the  
15 "inmates affected" field: "All," "Black," "White," "Hispanic," and "Other." Defendants refer the  
16 Court to Appendix E of Plaintiffs' Second Amended Complaint for its true and correct contents.  
17 Except as otherwise admitted, Defendants deny each and every remaining allegation.

18 35. Answering paragraph thirty-five of Plaintiffs' Second Amended Complaint,  
19 Defendants deny that "[r]ace-based lockdowns occur at all men's prisons under CDCR's  
20 jurisdiction" or that lockdowns are imposed "upon groups identified solely by their shared racial  
21 or ethnic characteristics." Defendants lack knowledge or information sufficient to form a belief  
22 as to the truth of the remaining allegations set forth in paragraph thirty-five and, on that basis,  
23 deny them.

24 36. Answering paragraph thirty-six of Plaintiffs' Second Amended Complaint,  
25 Defendants deny each and every allegation.

26 37. Defendants deny each and every allegation contained in paragraph thirty-seven of  
27 Plaintiffs' Second Amended Complaint.

1           38. Answering paragraph thirty-eight of Plaintiffs' Second Amended Complaint,  
2 Defendants admit that in July 2010, Plaintiffs' counsel addressed a letter to Defendant Cate  
3 asking that he modify the State's lockdown policy. Defendants further admit that Plaintiffs'  
4 counsel met with CDCR officials and discussed CDCR's lockdown and modified program  
5 policies. Except as otherwise admitted, Defendants deny each and every remaining allegation.

6           39. Answering paragraph thirty-nine of Plaintiffs' Second Amended Complaint,  
7 Defendants admit that Plaintiffs' counsel threatened to sue CDCR. Except as otherwise admitted,  
8 Defendants deny each and every remaining allegation.

9           40. Answering paragraph forty of Plaintiffs' Second Amended Complaint, Defendants  
10 deny that they "illegally lock prisoners down by race" or that they impose lockdowns for  
11 "excessively lengthy periods of time." The remainder of paragraph forty contains the Named  
12 Plaintiffs' factual characterizations and legal conclusions, to which no response is required. To  
13 the extent that the remaining allegations in paragraph forty require a response, Defendants deny  
14 these allegations.

15           41. Answering paragraph forty-one of Plaintiffs' Second Amended Complaint,  
16 Defendants deny each and every allegation.

17           42. Answering paragraph forty-two of Plaintiffs' Second Amended Complaint,  
18 Defendants admit that lockdowns and modified programs are administrative actions that may  
19 result in a partial release, temporary suspension, of limitation of various programs and services of  
20 the inmate population within the impacted facility. Defendants further admit that, at times, as one  
21 lockdown or program modification begins to lift, another violent incident or threat may surface,  
22 requiring a new modification. Except as otherwise admitted, Defendants lack information or  
23 belief sufficient to answer the remaining allegations set forth in paragraph forty-two of Plaintiffs'  
24 Second Amended Complaint and on that basis deny them.

25           43. Answering paragraph forty-three of Plaintiffs' Second Amended Complaint,  
26 Defendants deny that CDCR imposes "excessively lengthy lockdowns." Defendants further deny  
27 that there is "no legitimate penological interest" supporting lockdowns and modified programs.  
28

1           44. Answering paragraph forty-four of Plaintiffs' Second Amended Complaint,  
2 Defendants admit that lockdowns and modified programs are administrative actions that may  
3 result in a partial release, temporary suspension, of limitation of various programs and services of  
4 the inmate population within the impacted facility. Defendants further admit that, unless  
5 approved for single-cell assignment, inmates are expected to share occupancy of living quarters,  
6 either in a dormitory setting or within an individual cell. Defendants deny that Plaintiffs are  
7 confined to their cells for 24-hours per day during a lockdown or modified program. The  
8 remainder of paragraph forty-four contains the Named Plaintiffs' factual characterizations and  
9 legal conclusions, to which no response is required. To the extent that the remaining allegations  
10 in paragraph 44 require a response, Defendants deny these allegations.

11           45. Paragraph forty-five of Plaintiffs' Second Amended Complaint contains the Named  
12 Plaintiffs' factual characterizations and legal conclusions, to which no response is required. To  
13 the extent that the allegations in paragraph forty-five require a response, Defendants deny these  
14 allegations.

15           46. Answering paragraph forty-six of Plaintiffs' Second Amended Complaint,  
16 Defendants admit that when an inmate's presence in an institution's general inmate population  
17 presents an immediate threat to the safety of the inmate or others, endangers institution security or  
18 jeopardizes the integrity of an investigation of alleged serious misconduct or criminal activity, the  
19 inmate shall be immediately removed from general population and be placed in administrative  
20 segregation. Defendants further admit that inmates assigned to administrative segregation are  
21 guaranteed certain basic rights. Defendants refer the Court to Section 3343 of the California  
22 Code of Regulations, Title 15 for the true and correct conditions of segregated housing. The  
23 remainder of paragraph forty-six contains the Named Plaintiffs' factual characterizations and  
24 legal conclusions, to which no response is required. To the extent that the remaining allegations  
25 in paragraph forty-six require a response, Defendants deny these allegations.

26           47. Answering paragraph forty-seven of Plaintiffs' Second Amended Complaint,  
27 Defendants admit that Plaintiff Robert Mitchell is an African American prisoner. Except as  
28 otherwise admitted, Defendants deny each and every remaining allegation.

1           48. Answering paragraph forty-eight of Plaintiffs' Second Amended Complaint,  
2 Defendants admit that Mitchell transferred to CDCR custody in 2000. Defendants further admit  
3 that Mitchell has been housed at High Desert State Prison (March 2006 to December 2007), CSP-  
4 Sacramento (December 2007 to April 2010), and Folsom State Prison (April 2010 to present).  
5 Defendants further admit that Mitchell's ethnicity is "Black." Except as otherwise admitted,  
6 Defendants deny each and every remaining allegation.

7           49. Answering paragraph forty-nine of Plaintiffs' Second Amended Complaint,  
8 Defendants deny that High Desert State Prison posts color-coded signs as a way to "impose its  
9 racially discriminatory lockdowns." Defendants lack information or belief sufficient to answer  
10 the remaining allegations set forth in paragraph forty-nine of Plaintiffs' Second Amended  
11 Complaint and, on that basis, deny them.

12           50. Answering paragraph fifty of Plaintiffs' Second Amended Complaint, Defendants  
13 deny that High Desert State Prison imposed an overlapping series of lockdowns from May 2006  
14 to December 2007. Defendants further deny that "Black" inmates were "locked down nearly  
15 continuously over the entire 18-month period" or that Mitchell was ever locked down "solely on  
16 account of his race." Defendants lack knowledge or information sufficient to form a belief as to  
17 the truth of the remaining allegations set forth in paragraph fifty and, on that basis, deny them.

18           51. Answering paragraph fifty-one of Plaintiffs' Second Amended Complaint,  
19 Defendants admit that Mitchell had medical problems related to his hip and leg. Except as  
20 otherwise admitted, Defendants deny each and every remaining allegation.

21           52. Answering paragraph fifty-two of Plaintiffs' Second Amended Complaint,  
22 Defendants admit that Mitchell submitted an administrative grievance on September 18, 2006—  
23 log number HDSP 06-2672. But administrative grievance log number HDSP 06-2672 only  
24 addressed Mitchell's claim that he was allegedly subjected to a race-based lockdown at High  
25 Desert State Prison. Defendants admit that administrative grievance log number HDSP 06-2672  
26 was exhausted through the Director's Level of review and that a copy of the June 26, 2007  
27 Director's Level response is attached as Appendix C to Plaintiffs' Second Amended Complaint.  
28

1 Defendants refer the Court to Appendix C for its true and correct contents. Except as otherwise  
2 admitted, Defendants deny each and every remaining allegation.

3 53. Answering paragraph fifty-three of Plaintiffs' Second Amended Complaint,  
4 Defendants deny that Mitchell has been subjected to subsequent "race-based lockdowns" at  
5 Folsom State Prison or that he has ever been "locked down solely on the basis of his race."  
6 Defendants lack knowledge or information sufficient to form a belief as to the truth of the  
7 remaining allegations set forth in paragraph fifty-three and, on that basis, deny them.

8 54. Answering paragraph fifty-four of Plaintiffs' Second Amended Complaint,  
9 Defendants admit that Quezada has been incarcerated by CDCR since 2001. Defendants further  
10 admit that Quezada has been housed at various institutions including, but not limited to, Kern  
11 Valley State Prison (July 2005 to February 2011) and CSP-Corcoran (February 2011 to present),  
12 where he is currently incarcerated. Defendants further admit that Quezada's ethnicity is  
13 "Hispanic" or "Mexican." Except as otherwise admitted, Defendants deny each and every  
14 remaining allegation.

15 55. Answering paragraph fifty-five of Plaintiffs' Second Amended Complaint,  
16 Defendants admit that some of Quezada's official prison records (general chronos, CDC Form  
17 1882, and CDC Form 812) do not reflect any affiliation with any disruptive group or gang  
18 affiliation at the time the documents were created. Defendants deny that no CDCR documents  
19 indicate that Quezada is affiliated with a disruptive group or gang. Defendants deny that  
20 Quezada has never been involved in an incident giving rise to a modified program. Defendants  
21 deny that Quezada has been "locked down for lengthy periods of time solely because of his  
22 ethnicity."

23 56. Answering paragraph fifty-six of Plaintiffs' Second Amended Complaint, Defendants  
24 admit that Quezada has been subjected to modified programs affecting "Hispanic" and "Other"  
25 inmates. Except as otherwise admitted, Defendants deny each and every remaining allegation

26 57. Answering paragraph fifty-seven of Plaintiffs' Second Amended Complaint,  
27 Defendants admit that on February 11, 2010, an inmate classified as an "Other" in ethnicity  
28 attempted to stab an officer in the neck. Defendants further admit that as a result of the incident,

1 a modified program was implemented. Defendants deny that the modified program was only  
2 imposed on inmates classified with the ethnicity “Other” or that Quesada and all inmates  
3 identified by CDCR as Hispanic “Others” were “locked down solely because of their racial  
4 classification.” Defendants lack knowledge or information sufficient to form a belief as to the  
5 truth of the remaining allegations set forth in paragraph fifty-seven and, on that basis, deny them.

6 58. Answering paragraph fifty-eight of Plaintiffs’ Second Amended Complaint,  
7 Defendants admit that Quesada submitted an administrative grievance on March 3, 2010  
8 challenging a February 2010 lockdown at Kern Valley State Prison— log number KVSP-10-  
9 00481. Defendants further admit that administrative grievance log number KVSP-10-00481 was  
10 exhausted and that the Director’s Level response is attached as Appendix A to Plaintiffs’ Second  
11 Amended Complaint. Defendants refer the Court to Appendix A for its true and correct contents.  
12 Except as otherwise admitted, Defendants deny each and every remaining allegation.

13 59. Answering paragraph fifty-nine of Plaintiffs’ Second Amended Complaint,  
14 Defendants deny that Quezada has been subjected to subsequent “race-based lockdowns” at Kern  
15 Valley State Prison or that he has ever been “locked down solely on the basis of his race.”  
16 Defendants lack knowledge or information sufficient to form a belief as to the truth of the  
17 remaining allegations set forth in paragraph fifty-nine and, on that basis, deny them.

18 60. Answering paragraph sixty of Plaintiffs’ Second Amended Complaint, Defendants  
19 deny that Quezada was “confined to his cell for 24-hours per day” during a lockdown or modified  
20 program. The remainder of paragraph sixty contains factual characterizations and legal  
21 conclusions, to which no response is required. To the extent that the remaining allegations in  
22 paragraph sixty require a response, Defendants deny these allegations.

23 61. Answering paragraph sixty-one of Plaintiffs’ Second Amended Complaint,  
24 Defendants deny that Trujillo has been incarcerated by CDCR since 1982. Official prison records  
25 show that Trujillo came to CDCR on May 11, 1983. Defendants further deny that Trujillo has  
26 suffered from “illegal race-based lockdowns—and excessively lengthy lockdowns—on account  
27 of his ethnicity.” Defendants lack knowledge or information sufficient to form a belief as to the  
28 truth of the remaining allegations set forth in paragraph sixty-one and, on that basis, deny them.

1           62. Answering paragraph sixty-two of Plaintiffs' Second Amended Complaint,  
2 Defendants admit that Trujillo has been housed at Ironwood State Prison since 2007. Defendants  
3 deny that Trujillo has been locked down at Ironwood State Prison "on at least four occasions  
4 solely because of his ethnicity."

5           63. Answering paragraph sixty-three of Plaintiffs' Second Amended Complaint,  
6 Defendants deny that "all prisoners classified as 'Hispanic' were locked down pursuant to CDCR  
7 policy" as a result of the alleged lockdowns and modified programs identified in paragraph sixty-  
8 three of Plaintiffs' Second Amended Complaint. Defendants lack knowledge or information  
9 sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph sixty-  
10 three and, on that basis, deny them.

11           64. Answering paragraph sixty-four of Plaintiffs' Second Amended Complaint,  
12 Defendants deny that Trujillo was "confined to his cell for 24-hours per day" during a lockdown  
13 or modified program. The remainder of paragraph sixty-four contains factual characterizations  
14 and legal conclusions, to which no response is required. To the extent that the remaining  
15 allegations in paragraph sixty-four require a response, Defendants deny these allegations.

16           65. Defendants lack knowledge or information sufficient to form a belief as to the truth of  
17 the allegations set forth in paragraph sixty-five and, on that basis, deny them.

18           66. Answering paragraph sixty-six of Plaintiffs' Second Amended Complaint,  
19 Defendants admit that Trujillo submitted an administrative grievance challenging an alleged race-  
20 based lockdown at Kern Valley State Prison that began on October 28, 2007— log number ISP  
21 07-01825. Defendants further admit that administrative grievance log number ISP 07-01825 was  
22 exhausted and that the Director's Level response is attached as Appendix D to Plaintiffs' Second  
23 Amended Complaint. Defendants refer the Court to Appendix D for its true and correct contents.  
24 Except as otherwise admitted, Defendants deny each and every remaining allegation.

25           67. Answering paragraph sixty-seven of Plaintiffs' Second Amended Complaint,  
26 Defendants admit that Plaintiff Hanif Abdullah is an African American inmate. Defendants deny  
27 that Abdullah has been incarcerated since 2000. Official prison records show that Abdullah has  
28



1 served several sentences, dating back to June 27, 1991. Defendants deny that Abdullah has been  
2 subjected to many “race-based lockdowns pursuant to CDCR policy during that time.”

3 68. Answering paragraph sixty-eight of Plaintiffs’ Second Amended Complaint,  
4 Defendants admit that Abdullah is currently housed in Facility 1 at CSP-Solano and that he has  
5 been incarcerated there since July 16, 2008. Defendants further admit that CSP-Solano used  
6 color-coded signs to indentify the race of inmates in particular cells. Defendants further admit  
7 that that Abdullah’s ethnicity is “Black” and that a blue sign is used to indicate that an African  
8 American inmate resides in a particular cell. Except as otherwise admitted, Defendants deny each  
9 and every remaining allegation.

10 69. Answering paragraph sixty-nine of Plaintiffs’ Second Amended Complaint,  
11 Defendants deny that CSP-Solano’s color-coded signs “facilitate the prison’s regular imposition  
12 of race-based lockdowns.” Defendants admit that CSP-Solano implemented modified programs  
13 that affected all Facility 1 Black inmates from June 16, 2009 to July 16, 2009, May 28, 2010 to  
14 June 17, 2010, July 2, 2010 to July 16, 2010, October 11, 2010 to November 4, 2010, and from  
15 March 16, 2011 to April 5, 2011. Defendants deny that these modified programs were “race-  
16 based” or that they only affected Black inmates. Defendants lack knowledge or information  
17 sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph sixty-  
18 nine and, on that basis, deny them.

19 70. Answering paragraph seventy of Plaintiffs’ Second Amended Complaint, Defendants  
20 deny that inmates are afforded “limited access to medical care” during lockdowns and modified  
21 programs. Maintaining essential services (*i.e.*, health care services, hygiene, and access to courts)  
22 is required during a lockdown or modified program. When an inmate is scheduled for health care  
23 services during a modified program, the inmate is appropriately escorted to the appointment. The  
24 remainder of paragraph seventy contains factual characterizations and legal conclusions, to which  
25 no response is required. To the extent that the remaining allegations in paragraph seventy require  
26 a response, Defendants deny these allegations.

27 71. Answering paragraph seventy-one of Plaintiffs’ Second Amended Complaint,  
28 Defendants admit that religious services were impacted for Black inmates from June 16, 2009 to



1 July 16, 2009. During this time, a chaplain was available to make rounds and provide one-on-one  
2 services to inmates. Defendants lack knowledge or information sufficient to form a belief as to  
3 the truth of the remaining allegations set forth in paragraph seventy-one and, on that basis, deny  
4 them.

5 72. Answering paragraph seventy-two of Plaintiffs' Second Amended Complaint,  
6 Defendants admit that Abdullah's cell contains bunk beds, a toilet, desk, and a sink. Defendants  
7 further admit that Abdullah's cell door has a window facing the interior of the housing unit.  
8 Defendants further admit that inmates are afforded essential services (*i.e.*, health care services,  
9 hygiene, and access to courts) during a lockdown or modified program. Defendants deny that  
10 Abdullah "typically spent 24-hours each day in his cell" during a lockdown or modified program.  
11 Defendants further deny that Abdullah was required to eat, wash himself, and carry on all aspects  
12 of daily life inside his cell during a modified program. The remainder of paragraph seventy-two  
13 contains factual characterizations and legal conclusions, to which no response is required. To the  
14 extent that the remaining allegations in paragraph seventy-two require a response, Defendants  
15 deny these allegations.

16 73. Answering paragraph seventy-three of Plaintiffs' Second Amended Complaint,  
17 Defendants admit that Abdullah submitted an administrative grievance challenging an alleged  
18 race-based lockdown at CSP-Solano that began on June 16, 2009— log number SOL-09-01445.  
19 Defendants further admit that administrative grievance log number SOL-09-01445 was exhausted  
20 and that the Director's Level response is attached as Appendix B to Plaintiffs' Second Amended  
21 Complaint. Defendants refer the Court to Appendix B for its true and correct contents. Except as  
22 otherwise admitted, Defendants deny each and every remaining allegation.

23 74. Answering paragraph seventy-four of Plaintiffs' Second Amended Complaint,  
24 Defendants admit that Plaintiffs reallege and incorporate by reference all the previous numbered  
25 paragraphs and Defendants reallege their denials and responses in paragraphs one through  
26 seventy-two of their Answer.

27 75. Defendants deny each and every allegation contained in paragraph seventy-five of  
28 Plaintiffs' Second Amended Complaint.

1           76. Defendants deny each and every allegation contained in paragraph seventy-six of  
2 Plaintiffs' Second Amended Complaint.

3           77. Defendants deny each and every allegation contained in paragraph seventy-seven of  
4 Plaintiffs' Second Amended Complaint.

5           78. Defendants deny each and every allegation contained in paragraph seventy-eight of  
6 Plaintiffs' Second Amended Complaint.

7           79. Defendants deny each and every allegation contained in paragraph seventy-nine of  
8 Plaintiffs' Second Amended Complaint.

9           80. Defendants deny that the Named Plaintiffs are entitled to any of the relief requested in  
10 paragraph eighty of Plaintiffs' Second Amended Complaint.

11           81. Answering paragraph eighty-one of Plaintiffs' Second Amended Complaint,  
12 Defendants admit that Plaintiffs reallege and incorporate by reference all the previous numbered  
13 paragraphs and Defendants reallege their denials and responses in paragraphs one through eighty  
14 of their Answer.

15           82. Defendants deny each and every allegation contained in paragraph eighty-two of  
16 Plaintiffs' Second Amended Complaint.

17           83. Defendants deny each and every allegation contained in paragraph eighty-three of  
18 Plaintiffs' Second Amended Complaint.

19           84. Defendants deny each and every allegation contained in paragraph eighty-four of  
20 Plaintiffs' Second Amended Complaint.

21           85. Defendants deny each and every allegation contained in paragraph eighty-five of  
22 Plaintiffs' Second Amended Complaint.

23           86. Defendants deny each and every allegation contained in paragraph eighty-six of  
24 Plaintiffs' Second Amended Complaint.

25           87. Defendants deny that the Named Plaintiffs are entitled to any of the relief requested in  
26 paragraph eighty-seven of Plaintiffs' Second Amended Complaint.

27           88. Answering paragraph eighty-eight of Plaintiffs' Second Amended Complaint,  
28 Defendants admit that Plaintiffs reallege and incorporate by reference all the previous numbered

1 paragraphs and Defendants reallege their denials and responses in paragraphs one through eighty-  
2 seven of their Answer.

3 89. Defendants deny each and every allegation contained in paragraph eighty-nine of  
4 Plaintiffs' Second Amended Complaint.

5 90. Defendants deny each and every allegation contained in paragraph ninety of  
6 Plaintiffs' Second Amended Complaint.

7 91. Defendants deny each and every allegation contained in paragraph ninety-one of  
8 Plaintiffs' Second Amended Complaint.

9 92. Defendants deny that Mitchell is entitled to any of the relief requested in paragraph  
10 ninety-two of Plaintiffs' Second Amended Complaint.

11 93. Defendants deny that Mitchell is entitled to any of the relief requested in paragraph  
12 ninety-three of Plaintiffs' Second Amended Complaint.

13 94. Answering paragraph ninety-four of Plaintiffs' Second Amended Complaint,  
14 Defendants admit that Plaintiffs reallege and incorporate by reference all the previous numbered  
15 paragraphs and Defendants reallege their denials and responses in paragraphs one through ninety-  
16 three of their Answer.

17 95. Defendants deny each and every allegation contained in paragraph ninety-five of  
18 Plaintiffs' Second Amended Complaint.

19 96. Defendants deny each and every allegation contained in paragraph ninety-six of  
20 Plaintiffs' Second Amended Complaint.

21 97. Answering paragraph ninety-seven of Plaintiffs' Second Amended Complaint,  
22 Defendants admit that the State Government Claims Board denied Mitchell's claim (No. G-  
23 569735) at a hearing on March 20, 2008. But Defendants deny that Mitchell timely completed  
24 the required claim procedure for all claims alleged in Plaintiffs' Second Amended Complaint.

25 98. Defendants deny that Mitchell is entitled to any of the relief requested in paragraph  
26 ninety-eight of Plaintiffs' Second Amended Complaint.

27 99. Answering paragraph ninety-nine of Plaintiffs' Second Amended Complaint,  
28 Defendants admit that Plaintiffs reallege and incorporate by reference all the previous numbered

1 paragraphs and Defendants reallege their denials and responses in paragraphs one through ninety-  
2 eight of their Answer.

3 100. Defendants deny each and every allegation contained in paragraph one hundred of  
4 Plaintiffs' Second Amended Complaint.

5 101. Defendants deny each and every allegation contained in paragraph one hundred one  
6 of Plaintiffs' Second Amended Complaint.

7 102. Defendants deny each and every allegation contained in paragraph one hundred two  
8 of Plaintiffs' Second Amended Complaint.

9 103. Defendants deny each and every allegation contained in paragraph one hundred three  
10 of Plaintiffs' Second Amended Complaint.

11 104. Answering paragraph one hundred four of Plaintiffs' Second Amended Complaint,  
12 Defendants admit that the State Government Claims Board denied Mitchell's claim (No. G-  
13 569735) at a hearing on March 20, 2008. But Defendants deny that Mitchell timely completed  
14 the required claim procedure for all claims alleged in Plaintiffs' Second Amended Complaint.

15 105. Defendants deny that Mitchell is entitled to any of the relief requested in paragraph  
16 one hundred five of Plaintiffs' Second Amended Complaint.

#### 17 **PRAYER FOR RELIEF**

18 Defendants deny that the Named Plaintiffs are entitled to any of the relief requested in his  
19 Prayer for Relief.

#### 20 **AFFIRMATIVE DEFENSES**

21 1. Because Plaintiffs' Second Amended Complaint is couched in conclusory terms,  
22 Defendants cannot fully anticipate all affirmative defenses that may be applicable to this matter.  
23 The above defenses and affirmative defenses are based on the facts and information currently  
24 known to Defendants. Defendants reserve the right to amend or add defenses or affirmative  
25 defenses based on facts later discovered, pleaded, or offered.

26 2. Defendants assert that Plaintiffs' Second Amended Complaint fails to state a cause of  
27 action upon which relief may be granted.

1           3. Defendants assert that Defendants were acting within the scope of their official  
2 duties, acted reasonably, and thus are entitled to qualified immunity.

3           4. Defendants assert that the Named Plaintiffs' claims and the claims of the putative  
4 class members are barred, limited, or controlled by the Prison Litigation Reform Act.

5           5. Defendants assert that the Named Plaintiffs and the putative class members have  
6 failed to exhaust their administrative remedies as to Defendants and as to all claims.

7           6. To the extent that the Named Plaintiffs or members of the putative class have  
8 previously litigated the issues raised in this Second Amended Complaint, the Second Amended  
9 Complaint and all claims are barred by the doctrine of claim or issue preclusion.

10          7. Defendants assert that they exercised due care and acted only in the execution or  
11 enforcement of the law.

12          8. Defendants assert that they are immune from damages in that they acted in good faith  
13 in accordance with established law, including, but not limited to, the policies of the California  
14 Department of Corrections and Rehabilitation.

15          9. To the extent that the Named Plaintiffs or any of the putative class members have  
16 suffered any injury, the injury is due in whole or in part to Plaintiffs' own actions or inactions or  
17 the actions or inactions of the putative class members.

18          10. Plaintiffs and some or all of the members of the purported class lack standing to  
19 assert the claims alleged in the Second Amended Complaint.

20          11. To the extent that the Named Plaintiffs or members of the putative class have suffered  
21 any injury, the injury is due in whole or in part to persons or forces other than Defendants and the  
22 Named Plaintiffs have failed to name the proper defendants in this lawsuit.

23          12. Defendants assert that they did not act with malicious intent or with reckless  
24 disregard to the Named Plaintiffs' or putative class member's rights and therefore are not liable  
25 for punitive damages.

26          13. The Named Plaintiffs and putative class members have failed to mitigate their  
27 damages.  
28

1 14. Defendants are not liable for any injury or damages, if there were any, caused by an  
2 exercise of discretion. (Cal. Gov't Code §§ 815.2 & 820.2.)

3 15. Insofar as Defendants' alleged liability is based on their supervisory capacities,  
4 Defendants are not liable for damages under the doctrine of respondeat superior. Moreover,  
5 Defendants are not vicariously liable for any act or omission of any other person, by way of  
6 respondeat superior or otherwise.

7 16. The complaint and each cause of action is barred, and this Court is without  
8 jurisdiction, as the Named Plaintiffs and the members of the putative class have failed to comply  
9 with all statutory prerequisites for filing this suit, including all claim filing requirements of the  
10 California Government Claims Act.

11 17. Defendants asserts that the Named Plaintiffs' claims and the claims of putative class  
12 members are barred, limited, or controlled by Cal. Civ. Code §§ 1431, 1431.1, 1431.2, 1431.3,  
13 1431.4, or 1431.5.

14 18. The Named Plaintiffs' claims and allegations on behalf of the putative class are  
15 factually and legally inappropriate for resolution as a class action under Federal Rule of Civil  
16 Procedure 23.

17 19. In the event the putative class is certified, Defendants reserve all rights to assert any  
18 and all other and further defenses against any member of the class that may be certified.

19 **DEMAND FOR JURY TRIAL**

20 Under Federal Rule of Civil Procedure 38, Defendants demand that this action be tried by a  
21 jury.

22 **PRAYER FOR RELIEF**

23 Defendants pray for judgment as follows:

24 1. That judgment be rendered in favor of Defendants against the Named Plaintiffs  
25 and any putative class members;

26 2. That the Named Plaintiffs and members of the putative class take nothing by  
27 this action;

28 3. That Defendants be awarded costs of suit and attorney's fees; and

4. That Defendants be awarded such other relief as this Court deems proper.

Dated: August 10, 2012

Respectfully Submitted,

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JONATHAN L. WOLFF  
Senior Assistant Attorney General

/s/ Erin Sullivan

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